

REMARKS/ARGUMENTS

In response to the Office Action mailed February 9, 2007, the Examiner's rejection has been considered. Applicants respectfully traverse the rejection and earnestly solicit allowance of claims 1-15.

1. Claim Rejection – 35 U.S.C. § 102(e)

The Examiner rejected claims 1-15 under 35 U.S.C. § 102(e) as being anticipated by the '150 Patent. However, the Examiner identified that “[t]his rejection under 35 U.S.C. § 102(e) might be overcome ... by a showing under 37 C.F.R. § 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention ‘by another.’” (Office Action, p. 2, ll. 13-16).

A 37 C.F.R. § 1.132 declaration is included with this response, as suggested by the Examiner. The declaration includes the following pertinent information:

Each of Michael Delaney, Loren Nelson, Warren White, and Robert A. Luciano, Jr. (“the Applicants”) were employees of the Assignee when the Current '153 Application and the '150 Patent were filed.

The Applicants continue to be employees of the Assignee.

The subject matter of the '150 Patent relevant to the pending claims of the Current '153 Application was derived from the work of the Applicants, as amended to correct inventorship.

The subject matter of the '150 Patent relevant to the pending claims of the Current '153 Application was not claimed in the '150 Patent.

As such, the relevant subject matter of the '150 Patent is not an invention by “another”¹ with regard to the pending claims of the Current '153 Application. Further, the '150 Patent does not constitute a statutory bar² for the pending claims of the Current '153 Application because the publication/issue date of the '150 Patent³ is less than 1 year prior to the filing date of the Current

¹ 35 U.S.C. § 102(a) or (e); see, in general, MPEP § 2132.01.

² 35 U.S.C. § 102(b).

³ March 25, 2003.

‘153 Application.⁴ Therefore, the ‘150 Patent is not anticipatory prior art for the pending claims of the Current ‘153 Application. For this reason, it is respectfully requested that the rejection be withdrawn.

⁴ August 21, 2003.

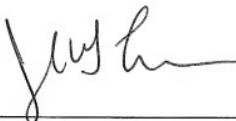
CONCLUSION

Applicants have made an earnest and *bona fide* effort to clarify the issues before the Examiner and to place this case in condition for allowance. Reconsideration and allowance of all of claims 1-15 is believed to be in order, and a timely Notice of Allowance to this effect is respectfully requested.

The Commissioner is hereby authorized to charge the fees indicated in the Fee Transmittal, any additional fee(s) or underpayment of fee(s) under 37 C.F.R. §§ 1.16 and 1.17, or to credit any overpayments, to Deposit Account No. 194293, Deposit Account Name STEPTOE & JOHNSON LLP.

Should the Examiner have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at (310) 734-3200. The undersigned attorney can normally be reached Monday through Friday from about 9:00 AM to 6:00 PM Pacific Time.

Respectfully submitted,



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